



Land Development News

County of San Diego
Department of Public Works
March 2010

Nick Ortiz, DPW Land Development Project Manager

Traffic Guidelines update

DPW Land Development Transportation Planning staff in conjunction with DPLU staff has completed a modification to the County's Traffic and Transportation Guidelines for Determining Significance and Report Format and Content Requirements. These guidelines establish the thresholds for significant traffic impacts to the County's roadway network caused by new development. Using the guidelines, DPW staff reviews environmental documents to ensure new developments mitigate their significant traffic impacts. The updated version of the guidelines is available on the following County website.

Guidelines: http://www.sdcounty.ca.gov/dplu/docs/Traffic_Guidelines.pdf

Report Formats: http://www.sdcounty.ca.gov/dplu/docs/Traffic_Report_Format.pdf

Below is a summary of the modifications that were completed:

- Revised the reference to the CEQA Guidelines, Appendix G questions to reflect the updated questions that were changed as a result of SB 97 greenhouse gas emission related legislation
- Deleted discussions related to adequate parking capacity to reflect the deletion of this topic from the CEQA Guidelines, Appendix G
- Added discussion to Section 2.2 of the Guidelines regarding TIF as mitigation for cumulative impacts
- Updated Congestion Management Program information to reflect the latest 2008 update
- Added discussion to the mitigation section of the Report Format and Content Requirements to address mitigation of impacts outside of the County's jurisdiction
- Added Appendix C to the Report Format and Content Requirements to clarify the required scope of cumulative analysis and cumulative impact mitigation

Ed Sinsay, DPW Land Development Project Manager

Offsite easements, permission to grade letters and release of covenants

At the Professional Societies Task Force Committee meeting with County staff on February 4, 2010, the issues of needed offsite easements, permission to grade letters and release of covenants were discussed. Private design professionals must determine the need and/or existing status of these items during initial design of their discretionary projects. If, after research, it was determined that an easement or a letter of permission to grade was required, the design professional would take the necessary actions to obtain them.

During the course of conversation, an additional tool was suggested that would allow the reservation of the needed easements or permissions without purchasing or obtaining them prior to project approval. This tool is an "Option Agreement" that is a signed legal document that reserves the right of the developer to acquire easements from or through adjacent or off-site



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properties as needed for the discretionary project. Option agreements have not yet been used as a tool by the County; however, we have confirmed with County Counsel that an option agreement could be a viable tool to allow a tentative map to process without requiring an applicant to purchase the agreement prior to tentative map approval. An option agreement must ensure that it binds the right on the developer to obtain property rights sufficient to construct and maintain required improvements. If the option agreement is approved, it would allow the project to be processed and conditionally approved. Prior to final map approval, recordation the easements reserved under the option would need to be obtained.

Further discussion occurred with respect to the format of Letters of Permission to Grade. Doug Logan provided a recorded document as a sample (Attachment 1) that included permission to construct drainage improvements and release for diversion of drainage. This format was reviewed and found acceptable to the County. The currently accepted Letter of Permission to grade (Attachment 2) is included for reference. Concerns were brought up that sometimes offsite neighbors are reluctant to sign a letter of permission to grade because of liability issues. If this is the case, indemnification wording can be placed on the document similar to that contained in Attachment 1.

DPW will be reviewing format and wording of these Letters of Permission to Grade to determine if temporary easements on neighboring property would need to be granted (time specified or during the duration of construction and approval) and the potential need for these Letter of Permission to Grade documents to be recorded. Temporary easement would give the ability for County inspection and would give the private contractor or private professional the ability to inspect or correct problems that might occur on the neighbor's property. The recordation would ensure that the permission would stay viable should the property change hands.

On the topic of covenant release, an issue that was raised during the February 4th discussion was the need install posts with site addresses to release the Covenant for certain parcel maps. DPW Staff discussed this issue with DPLU Fire Safety staff, and the sign post requirement is a safety requirement and is required per local fire code and State Title 14 requirements. The installation of posts with site addresses is handled on an individual lot by lot basis, and the Covenant is partially released because a final letter of approval from the responsible fire agency needs to be submitted prior to ultimate release of the street post covenant. This partial covenant release allows the applicant to apply for a building permit which is the time that addresses are issued for the lot.

If there are any questions regarding the items above, please contact Ed Sinsay, DPW Project Manager, at (858) 694-2486, or email at Ed.Sinsay@sdcounty.ca.gov .

Derek Gade, PDCI DPW LUEG Program Manager

New Statewide General Construction Permit – Effective Date is July 1, 2010

On September 2, 2009, the State Water Resources Control Board (SWRCB) adopted Order Number 2009-0009-DWQ that approved a new Statewide General Construction Permit. This new requirement becomes effective July 1, 2010. There are numerous new requirements that require more planning and work by the land development community. To learn more about the specifics of these requirements, the new permit can be reviewed at:

www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml .

In addition, there are numerous classes being offered by the SWRCB and private industry on this topic. These classes will provide you with information about the major changes and better



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help you prepare for this significant change. The SWRCB is offering free classes on this topic and more information on times and a location is available at www.waterboards.ca.gov/academy. As noted in the SWRCB's fact sheet, some of the new major changes from the previous permit are as follows:

1. **Rainfall Erosivity Waiver:** this General Permit includes the option of allowing a small construction site (>1 and <5 acres) to self-certify if the rainfall erosivity value (R value) for their site's given location and time frame compute to be less than or equal to 5.
2. **Technology-Based Numeric Action Levels (NALs):** this General Permit includes NALs for pH and turbidity.
3. **Technology-Based Numeric Effluent Limitations (NELs):** this General Permit contains daily average NELs for pH during any construction phase where there is a high risk of pH discharge and daily average NELs turbidity for all discharges in Risk Level 3. The daily average NEL for turbidity is set at 500 NTU to represent the minimum technology that sites need to employ (to meet the traditional Best Available Technology Economically Achievable (BAT)/ Best Conventional Pollutant Control Technology (BCT) standard) and the traditional, numeric receiving water limitations for turbidity.
4. **Risk-Based Permitting Approach:** this General Permit establishes three levels of risk possible for a construction site. Risk is calculated in two parts: 1) Project Sediment Risk, and 2) Receiving Water Risk.
5. **Minimum Requirements Specified:** this General Permit imposes more minimum BMPs and requirements that were previously only required as elements of the SWPPP or were suggested by guidance.
6. **Project Site Soil Characteristics Monitoring and Reporting:** this General Permit provides the option for dischargers to monitor and report the soil characteristics at their project location. The primary purpose of this requirement is to provide better risk determination and eventually provide better program evaluation.
7. **Effluent Monitoring and Reporting:** this General Permit requires effluent monitoring and reporting for pH and turbidity in storm water discharges. The purpose of this monitoring is to determine compliance with the NELs and evaluate whether NALs included in this General Permit are exceeded.
8. **Receiving Water Monitoring and Reporting:** this General Permit requires some Risk Level 3 dischargers to monitor receiving waters and conduct bioassessments.
9. **Rain Event Action Plan:** this General Permit requires certain sites to develop and implement a Rain Event Action Plan (REAP) that must be designed to protect all exposed portions of the site within 48 hours prior to any likely precipitation event.
10. **Annual Reporting:** this General Permit requires all projects that are enrolled for more than one continuous three-month period to submit information and annually certify that their site is in compliance with these requirements. The primary purpose of this requirement is to provide information needed for overall program evaluation and public information.
11. **Certification/Training Requirements for Key Project Personnel:** this General Permit requires key personnel (e.g., SWPPP preparers, inspectors, etc.) have specific training or certifications to ensure their level of knowledge and skills are adequate to ensure their ability to design and evaluate project specifications that will comply with General Permit requirements.
12. **Linear Underground/Overhead Projects:** this General Permit includes requirements for all Linear Underground/Overhead Projects (LUPs).

County staff is currently becoming more familiar with these new construction permit requirements to better help educate the development community. As more information is available, additional updates will be provided.



If you have any questions, please feel free to contact Private Development Construction Inspection at (858) 694-3165 or at grading@sdcounty.ca.gov.

Sara Agahi, DPW Watershed Protection Program

Nancy Barber and Richard Díaz, DPW Watershed Protection Program

Developer and Subsequent Owner Responsibility to Maintain Post-Construction Treatment Control BMPs in Perpetuity

The Regional Municipal Stormwater Permit requires proponents of all Priority Development Projects to ensure on-going, long-term maintenance of all post-construction treatment control BMPs (TC-BMPs). These post-construction TC-BMPs are not to be confused with construction phase TC-BMPs. A de-silting basin is a temporary construction BMP. Engineered extended detention basins and drainage inserts are post-construction BMPs that must be approved in the stormwater management plan (SWMP); they are intended to be maintained during the functional life of the development.

The Permit further requires the County to establish a tracking program to ensure developers, and subsequent property owners, are maintaining the post-construction TC-BMPs as approved in the final SWMP. The contact information for the responsible party (usually the developer at first), along with the final SWMP, final record plan, and maintenance agreements, if applicable, are forwarded to the DPW—Watershed Protection Program (WPP). Depending on the types of TC-BMPs, the site then will be prioritized and entered into DPW's tracking inventory.

Section 67.813 of the County Watershed Protection Ordinance requires property owners to provide clear written notice of the TC-BMP maintenance responsibility when ownership is transferred to another party. A copy of the transfer agreement needs to be forwarded to the WPP.

Annual verification of effective operation and maintenance of each approved TC-BMP by the responsible party is required to be sent to the WPP prior to the start of each rainy season on October 1. These certifications will need to state the date when the TC-BMP was inspected, the inspection findings, and any corrective actions taken. In addition, random or quality control inspections by the WPP will be conducted over the life of the development to ensure the effective operation of the TC-BMPs.

For more information please refer to the current SUSMP:

http://www.sdcounty.ca.gov/dpw/watersheds/susmp/susmppdf/susmp_manual.pdf, Chapter 5;

For the definition of a Priority Development Project see Miles Safa's article in the January issue of Land Development News or page 17 of the Stormwater Permit at:

http://www.waterboards.ca.gov/sandiego/water_issues/programs/stormwater/docs/sd_permit/r9_2007_0001/2007_0001final.pdf.



Terry Connors, DPW County Surveyor

Design Profession Liens

Reprinted with permission "California Surveyor", Issue #160

Authors: J.V. Hogan & Robert H. Stellwagen

Summary

- Historically, design professional fail to file liens
- Without liens, design professional fall to the end of the line of failed projects behind secured creditors
- Design Lien rights are provided in California Civil Code Sections 3081.1 – 3081.10

When should you protect your rights

- Properties with a chance of going into foreclosure
- Design complete but projects stalled for financing
- Provided some or all of the clients services

How to protect your rights

- Only contract with a fee title land owner
- Prior to the start of a project, you have right to file a "Design Professional" lien" (available to certified architects, registered professional engineers and licensed land surveyors)
- Be aware there are numerous requirements and strict timing – failure in any of these likely extinguishes and design lien rights

You can lien the following

- Landowner defaults in any payment or refuses to pay upon demand not less than 10-days prior to recordation, design professional mails by first class, registered or certified mail, a written demand for payment specifying that a default has occurred pursuant to the contract or agreement and the amount of the default

How to file a lien

- A design professional shall record a notice of lien no later than 90 days after the design professional knows or has reason to know that the landowner is not commencing the work of improvement.
- The design professional records, in the office of the county recorder, a notice of lien which specifies that a lien is created in favor of the named design professional, specifies the amount thereof, identifies the current owner of record of the real property, provides a legal description of the real property to be improved, and specifies the building permit or other governmental approval for the work of improvement required as a condition of recording the notice of lien.
- Upon recordation of the notice of lien, a lien is created in favor of the named design professional.

A lien is good for

- The lien shall automatically expire and be null and void and of no further force or effect on the occurrence of either of the following:
 1. The commencement of the work of improvement for which the design professional furnished services at the request of the landowner.
 2. The expiration of 90 days after recording the notice of lien, unless the design professional files suit to enforce the lien within 90 days of recordation.



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- In the event the landowner partially or fully satisfies the lien, the design professional shall execute and record a document which evidences a partial or full satisfaction and release of the lien.

Mistakes to avoid

- Failure to contract for services with the real fee owner of the property
- Be careful of developers with multiple entities
- You have no lien rights when working for other professionals, but you should require them to protect both your design professional rights

Lien limitation (Civil Code Section 3081.9)

- No lien shall arise pursuant to this civil code, and a design professional may not record a notice of lien unless a building permit or other governmental approval in furtherance of the work of improvement has been obtained in connection with or utilizing the services rendered by the design professional.
- No lien created by this civil code shall affect or take priority over the interest of record of a purchaser, lessee, or encumbrance, if the interest of the purchaser, lessee, or encumbrance in the real property was duly recorded before recordation of the design professionals' lien.
- No lien created by this civil code shall affect or take priority over an encumbrance of a construction lender which funds the loan to commence the work of improvement for which the design professional furnished services at the request of the landowner.
- The design professionals' lien provided in this civil code shall not apply to a work of improvement relating to a single-family owner occupied residence where the construction costs are less than one hundred thousand dollars (\$100,000) in value.

Additional remedies (Civil Code Section 3081.8)

- This civil code provision does not affect the ability of a design professional to obtain a mechanic's lien pursuant to Title 15 (commencing with Section 3082) of the Civil Code.
- The lien of a design professional perfected pursuant to this civil code shall not affect the ability of the design professional to pursue other remedies.

For more information, please see the full California Surveyor Design Lien Article attached. As always, please contact an attorney as needed for your individual situation as facts or circumstances will vary from case-to-case.